SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 255

LOUIS E. RODDEWIG, AS CHAIRMAN OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW, AND INDIVIDUALLY; D. L. MURROW AND C. FRANK GREEN, AS MEMBERS OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW, AND INDIVIDUALLY,

Petitioners,

vs.

SEARS, ROEBUCK AND CO.

No. 256

LOUIS E. RODDEWIG, AS CHAIRMAN OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW, AND INDIVIDUALLY; D. L. MURROW AND C. FRANK GREEN, AS MEMBERS OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW, AND INDIVIDUALLY,

Petitioners,

vs.

MONTGOMERY WARD AND CO., INCORPORATED.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA AND BRIEF IN SUPPORT THEREOF.

JOHN M. RANKIN,
Attorney General of the State of Iowa,
JOHN E. MULRONEY,
Assistant Attorney General,
Counsel for Petitioners.

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vs.

Petitioners,

MONTGOMERY WARD AND CO., INCORPORATED.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Louis E. Roddewig, D. L. Murrow and C. Frank Green, as members of the Iowa State Board of Assessment and Review pray that Writs of Certiorari issue

to review the judgments of the Supreme Court of the State of Iowa entered in the above cases on May 14, 1940, confirming judgments of the District Court of Polk County, Iowa, dated October 13, 1938, and by their counsel petitioners respectfully show:

Record References.

The two cases involve identical questions of law and to a very great extent identical questions of fact. They were not consolidated for trial in the District Court of Polk County, but that court rendered identical opinions and decrees and the cases were orally argued together in the Supreme Court of Iowa. Separate records have been filed and we will designate the record reference in the Sears, Roebuck case as "R. S." and the record in the Montgomery Ward & Company case as "R. M.".

Summary Statement of the Matter Involved.

Sears, Roebuck and Company and Montgomery Ward and Company are non-resident corporations licensed to do business in the State of Iowa. Pursuant to such licenses they have established and are now conducting various retail stores in Iowa. In addition to the businesses conducted in Iowa, these corporations each conduct a mail order business through mail order stores or establishments located outside of Iowa. From time to time mail order catalogs are sent to prospective customers in Iowa and the Iowa customers send orders by mail to such mail order stores located outside of Iowa and the orders are there filled and the merchandise shipped to the purchasers in Iowa.

The Iowa Use Tax Act provides that every retailer maintaining a place of business in the State and making sales of tangible personal property for use in the State shall at

the time of the making of the sale, whether within or without the State, collect 2% use tax from the purchaser. Other provisions of the Act provide that the tax shall constitute a debt owed by the retailer to the State and further that whenever the retailer maintaining a place of business in the State is a corporation authorized to do business in Iowa and fails to comply with the provisions of the Iowa Use Tax Act, then the retailer's license and the permit authorizing the corporation to do business in the State of Iowa may be revoked.

Sears, Roebuck and Company and Montgomery Ward and Company, hereafter called the corporations, have not collected or paid a use tax on such mail order sales to the Iowa residents. Louis E. Boddewig, D. L. Murrow and C. Frank Green, members of the Iowa State Board of Assessment and Review, hereafter called the Board, adopted a resolution threatening to revoke the corporations' retailers licenses and permits to do business in Iowa for failure to collect and pay the use tax on mail order sales of tangible personal property to the residents of Iowa.

The corporations each sought an injunction restraining the Board from taking any action to secure the revocation of their retailers licenses or permits to do business in Iowa. The Polk County Iowa District Court granted the injunctions holding the Iowa Use Tax Law, insofar as it purports to authorize the Board to insist upon the corporations collecting the tax on mail order sales made to persons in Iowa through mail order establishments located outside of Iowa, is unconstitutional, being contrary to Section 1 Article I of the Constitution of the United States and Section 1 of the Fourteenth Amendment thereto.

Upon appeal to the Supreme Court of Iowa the decisions of the lower court were affirmed (the Chief Justice and three other Justices dissenting) upon the same ground, viz: the Iowa Use Tax Law, insofar as it purports to compel the

corporations to collect the 2% tax from Iowa purchasers in mail order transactions under penalty of revocation of the corporations' retailers licenses and permits to do business in Iowa, is in violation of Section 8 of Article I of the United States Constitution, and Section 1 of the Fourteenth Amendment thereto.

Opinions of the Court Below.

The opinion of the Iowa Supreme Court in the *Sears, Roebuck* case is the controlling opinion and it is reported in 292 N. W. 130 and is found in the record (R. S. 130).

The opinion of the Iowa Supreme Court in the *Montgomery Ward* case is reported in 292 N. W. 142 and is found in the record (R. M. 151).

Jurisdictional Statement.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to review by writ of certiorari the judgments of the Supreme Court of Iowa is Section 237(b) of the Judicial Code, as amended, United States Code Annotated, Title 28, Section 344(b) which provides:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States; * * * and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied."

Cases which also sustain the jurisdiction of the Supreme Court of the United States to review these judgments by certiorari are *State of Minnesota* v. *Blasius*, 290 U. S. 1, 78 L. Ed. 131 (1933); and *Milk Control Board* v. *Eisenberg Farm Products*, 306 U. S. 346, 83 L. Ed. 752 (1939).

Statutes of the State of Iowa the Validation of Which is Involved.

The statutes of the State of Iowa, the validity of which is involved when applied to corporations' mail order businesses are the payment and collection statutes of the Iowa Use Tax Law, being Sections 6943.109, 6943.112 and 6943.122 of the 1939 Code of Iowa (Appendix B). Section 6943.109 provides that retailers maintaining a place of business in the State and making sales of tangible personal property for use in the State "shall at the time of making such sales, whether within or without the State, collect the tax imposed * * *."

Section 6943.112 provides that "any tax collected by any retailer pursuant to said sections shall constitute a debt owed by the retailer to this State."

Section 6943.122 provides that whenever the retailer maintaining a place of business in Iowa is a corporation authorized to do business in Iowa and said corporation fails to comply with the provisions of the Act, then the corporation's retail license and permit to do business in Iowa may be revoked.

The final judgments are the decisions of the Supreme Court of the State of Iowa filed in the office of the Clerk of the Supreme Court of Iowa on April 14, 1940 affirming the action of the trial court in granting injunctions restraining the proposed action of the Board toward revoking the corporations' retailers licenses and permits to do business in Iowa (R. S. 130 and R. M. 151). The date upon which

the application for writs of certiorari is presented is the 18th day of July, 1940.

The Validity of a Statute of a State on the Ground of Its Being Repugnant to the Federal Constitution is Involved in These Cases.

The Supreme Court of the State of Iowa, the highest court of that State, held that the collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail order businesses constituted a violation of Section 8 of Article I of the Constitution of the United States and Section 1 of the Fourteenth Amendment thereto (R. S. 134, 136, 142 and R. M. 152). These collection and payment provisions of the Iowa Use Tax Law were all assailed as being repugnant to the above provisions of the United States Constitution in the *Sears, Roebuck* case in the petition filed by that corporation in paragraphs 10, 11 and 13 (R. S. 12-19).

In the *Montgomery Ward and Company* case the collection and payment provisions of the Iowa Use Tax Act were all assailed as being repugnant to the above provisions of the United States Constitution in the petition filed by Montgomery Ward and Company in paragraphs 21(a) and 21(c) (R. M. 9 and 11).

These allegations were denied in the answer filed by the Board and specifically denied in paragraph 14 of the answer in the *Sears, Roebuck* case (R. S. 41 and 42) and in the second paragraph of the numbered paragraph 4 in the answer in the *Montgomery Ward and Company* case (R. M. 31).

When all the testimony had been presented the trial court rendered a written opinion holding the collection and payment provisions of the Iowa Use Tax Act infringed upon the constitutional rights of the corporation, in the following

language, which appears in R. S. 106 and R. M. 106 and 107 as follows:

> "As indicated by the reasoning of the court in the instant case and in this opinion, this court is of the opinion, and so holds, that the attempt by the State of Iowa, through the medium of the defendants, the Board of Assessment and Review of the state, to interpret and apply the statute so as to make it obligatory upon the plaintiff to collect the use tax on these items of exclusive mail order transactions wherein the fact situation is as already outlined herein, is clearly violative of the constitutional rights of the plaintiff in regard to invading the rights of the plaintiff under Section 1 of the 14th Amendment to the Constitution of the United States, and in regard to Section 8 of Article 1, of said Constitution."

The Supreme Court of the State of Iowa in its decisions in these cases upheld the decisions of the trial court and we quote from the controlling opinion in the *Sears, Roebuck* case as follows (R. S. 134 and 135):

> "The court held that the use tax law, insofar as it purports to authorize the defendants to insist upon plaintiff collecting and paying the use tax on mail order sales made to persons in Iowa through the mail order establishments located outside of Iowa, is unconstitutional and void, being contrary to Section 8 of Article I of the Constitution of the United States, and Section 1 of the 14th Amendment thereto. A permanent injunction was granted restraining defendants from making any finding that plaintiff has failed to comply with the provisions of the Iowa use tax law or taking any action to secure the revocation or cancellation of its sales permit covering the operation of its retail stores in Iowa or its license to do business as a foreign corporation in this state. From this decree defendants have appealed. * * *
>
> "The question presented is whether Section 6943.109, requiring plaintiff to collect the tax on mail order sales

made without the state, is constitutional when considered with the provision that, under Section 6943.119, the tax, collected or required to be collected, is a debt of plaintiff, and, upon a finding that plaintiff has failed to pay such debt, under Section 6943.122 plaintiff's permit to do business as a foreign corporation in this state must be revoked. We are of the opinion that the court correctly held that the provisions of the chapter, as applied to the mail order sales shown by the record herein, are unconstitutional and, therefore, void."

The question presented in these cases is a question of substance. The immediate amounts involved are large (2% of the gross sales in the *Sears, Roebuck* case alone, which sales totalled $5,400,000 in a single year. R. S. 88). In case the application for this writ is denied, the State of Iowa will be denied the right to collect approximately half a million dollars. Other States are vitally interested in a determination of the issues here involved. Over half of the States and New York City have a general sales tax and at least eighteen States have a use tax that imposes the duty of collection upon sellers within their jurisdiction.

Questions Presented.

The questions presented in these cases are as follows:

1. Do the collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail order businesses amount to extraterritorial operation of the law within the prohibition of the 14th Amendment to the Constitution of the United States?

2. Do the collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail order businesses impose a tax upon their activities without the State within the prohibition of the 14th Amendment to the Constitution of the United States?

3. Do the collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail order

business agents in a discriminatory manner within the prohibition of the 14th Amendment to the Constitution of the United States?

4. Do the collection and payment provisions of the Iowa Use Tax Law as applied to corporations' mail order businesses impose an unconstitutional burden on interstate commerce?

5. Do the provisions of the Iowa Use Tax Law providing for the revocation of the corporations' retail licenses and permits to do business in Iowa upon failure to collect and pay the Iowa use tax upon mail order sales violate any constitutional rights guaranteed to the corporations under the 14th Amendment to the Constitution of the United States?

Assignment of Errors.

It is submitted that the Supreme Court of Iowa erred in holding:

(a) That the collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail order businesses amounted to extraterritorial operation of the Iowa laws within the prohibition of the 14th Amendment to the Constitution of the United States;

(b) That the collection and payment provisions of the Iowa Use Tax Laws as applied to the corporations' mail order businesses imposed a tax upon their activities outside of the State within the prohibition of the 14th Amendment to the Constitution of the United States;

(c) That the collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail order businesses imposed an unconstitutional burden on interstate commerce.

(d) In regarding itself as compelled by Section 8 Article I of the Constitution of the United States and Section 1 of the 14th Amendment thereto to affirm the ruling of the Polk County District Court restraining the Board from taking steps to cancel the permits and retail licenses of the corpora-

tions for failure to collect or pay the tax on mail order sales to Iowa residents.

Reasons Relied On for Allowance of the Writs.

The reasons relied on by petitioners for allowance of the writs are as follows:

1. As already pointed out, the questions presented in these cases are questions of substance involving the right of the State of Iowa to collect a tax of approximately half a million dollars.

2. Petitioners contend that in holding the Iowa Use Tax Act as applied to the corporations' mail order businesses constitutes an unconstitutional burden upon interstate commerce, the Supreme Court of Iowa has decided a Federal question of substance in a way probably not in accord with the applicable decisions of this Court which cases we cite in the subjoined brief.

3. Petitioners contend that in holding the Iowa Use Tax Act, insofar as it compels the mail order corporations to collect the use tax, violates Section 1 of the 14th Amendment to the Constitution, the Supreme Court of Iowa has decided a Federal question of substance in a way probably not in accord with the applicable decisions of this Court, which we cite in the subjoined brief.

4. The decision of the Supreme Court of Iowa unduly limits the taxing power of the State of Iowa, for the power to compel the seller to collect the sales or use tax from the purchaser is recognized as necessary to the proper enforcement of the tax act.

5. The decisions of this Court have never gone so far as to say that a company doing some interstate business may not, when it enters a foreign State, be compelled to assume the burden borne by domestic sellers of collecting from its

customers and transmitting to the authorities a sales tax imposed upon such customers by local law *Monamotor Oil Co.* v. *Johnson*, 292 U. S. 86, 78 L. Ed. 1141, 54 S. Ct. 575; *Felt & Tarrant Mfg. Co.* v. *Gallagher*, 306 U. S. 62, 83 L. Ed. 488, 59 S. Ct. 376; *McGoldrick* v. *Berwind White Coal Mining Co.*, 309 U. S. 33, 84 L. Ed. Adv. Op. 343, 60 S. Ct. 388. To hold otherwise would mean that foreign vendors could obtain unjustifiable advantages over local competitors who are required to collect the 2% tax, and thus forms of tax avoidance and tax evasion are fostered.

WHEREFORE, your petitioners respectfully pray that Writs of Certiorari be issued out of and under the Seal of this Honorable Court directed to the Supreme Court of the State of Iowa commanding that court to certify and send to this Court, for its review and determination, a full and complete transcript of the records and all proceedings of said Supreme Court had in the cases numbered and entitled on its docket, Nos. 44997-44963, *Sears, Roebuck* v. *Roddewig*, *Montgomery Ward & Co., Inc.*, v. *Roddewig et al.*, to the end that the decisions and judgments of said Supreme Court may be reviewed and reversed by this Honorable Court and that judgment may be entered for these petitioners.

STATE OF IOWA,
By JOHN M. RANKIN,
Attorney General of the
State of Iowa;
JOHN E. MULRONEY,
Assistant Attorney General.

SUPREME COURT OF THE UNITED STATES

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MONTGOMERY WARD AND CO., INCORPORATED.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

Statement of the Case.

The facts of the two cases are stated adequately in the petition for the writs of certiorari.

ARGUMENT.

Point I—The Iowa Sales Tax Law and the Iowa Use Tax Law present a plan for taxing all retail purchases in Iowa.

We have set forth in Appendix "A" the Iowa Sales Tax Law and in Appendix "B" the Iowa Use Tax Law. The Iowa Sales Tax Law is set forth for the purpose of showing that the use tax law, the collection and payment features of which are here involved, is complementary to the sales tax law.

This plan is identical with the plan employed by the State of Washington in connection with its sales tax and compensating tax, and the State of California in connection with its sales and use tax. See *Henneford* v. *Silas-Mason Company*, 300 U. S. 577, 81 L. Ed. 814, 57 S. Ct. 524, and *Felt & Tarrant Co.* v. *Gallagher*, 306 U. S. 62, 83 L. Ed. 488, 59 S. Ct. 376. In *Henneford* v. *Silas-Mason Company* the United States Supreme Court took into consideration the complementary features of the act and the taxing system employed. For the purpose of the consideration of the issues involved in these cases, we submit the two taxing acts should be considered together as constituting a single entire plan of taxation.

Point II—The collection and payment provisions of the Iowa Use Tax Law as applied to the corporations' mail Order businesses do not amount to extraterritorial operation of the law within the prohibition of the 14th Amendment to the Constitution of the United States.

We do not feel that anything can be added by way of argument to the statements made by Chief Justice Hamilton in the dissenting opinion in the *Sears, Roebuck* case (R. S. 150 to 154).

There, Chief Justice Hamilton points out that the theory of the majority opinion that to require the seller to collect the tax is an attempt to regulate an out-of-state activity

forbidden by the 14th Amendment to the Constitution is erroneous in that the situation is exactly the same as that which existed in the case of *Felt & Tarrant Mfg. Co.* v. *Gallagher*, 306 U. S. 62, 83 L. Ed. 488, 59 S. Ct. 376.

Chief Justice Hamilton quotes at length from the *Felt & Tarrant Company* decision and points out that the issue of extraterritoriality was involved in that case and decided against the petitioners.

As Chief Justice Hamilton points out, the same issue was involved in the *Monamotor Oil Company* v. *Johnson*, 292 U. S. 86, 78 L. Ed. 1141, 54 S. Ct. 575 (R. S. 156).

Point III—The collection and payment provisions of the Iowa Use Tax Law as applied to corporations' mail order businesses do not impose an unconstitutional burden on interstate commerce.

The main types of applicable situations where certain taxes were held to be an unconstitutional burden on interstate commerce were recently summarized in the opinion in *McGoldrick* v. *Berwind White Coal Mining Co.*, 309 U. S. 33, 84 L. Ed. Adv. Ops. 343, 60 S. Ct. 388. It seems to be settled by that case, and other leading cases on the subject that where a tax is nondiscriminatory and where it does not impose unwarranted licensing requirements, it will be upheld, provided there is no possibility of multiple taxation. *Western Live Stock* v. *Bureau of Revenue*, 303 U. S. 250, 82 L. Ed. 823; *J. D. Adams Mfg. Co.* v. *Storen*, 304 U. S. 307, 82 L. Ed. 1365; *Coverdale* v. *Arkansas-Louisiana Pipe Line Company*, 303 U. S. 604, 82 L. Ed. 1043; *Gwin, White & Prince* v. *Henneford*, 305 U. S. 434, 83 L. Ed. 273.

Measured by These Standards the Tax Here is Clearly Valid.

1. Purchasers from foreign vendors are required to pay the same tax as purchasers from local vendors and no more. Foreign vendors are placed under the same general obligations with respect to collecting the tax as local vendors.

Foreign products are not discriminated against. On the other hand, local vendors, local products, and local businesses are discriminated against if retail sales can be made by retailers doing business within the State by a system of mail order transactions from a point outside the State.

2. There is no possibility of multiple taxation for if the Iowa purchaser pays a sales tax in any other State, exemption from use tax is given by virtue of Section 26 of the Use Tax Law, being Code Section 6943.125, Appendix "B". The tax is not on the gross receipts of a vendor imposed by the vendor's State, rather on the purchase of a local consumer. The tax is upon the acquisition of property in the local market.

With respect to analogous taxes on consumers, the court has already held that the State in which the consumer is may tax him. Thus it has sustained the following consumers' taxes imposed by the buyer's State, viz: A motor fuel sales tax sustained in *Wiloil Corporation* v. *Pennsylvania*, 294 U. S. 169, — L. Ed. —; *Monamotor Oil Co.* v. *Johnson*, 292 U. S. 86, 78 L. Ed. 1141.

Other comparable sales taxes have been upheld by the Supreme Court of the United States. *Felt & Tarrant Mfg. Co.* v. *Gallagher*, 306 U. S. 62, 83 L. Ed. 488, 59 S. Ct. 376; *McGoldrick* v. *Felt & Tarrant Mfg. Co.*, 60 Supreme Court, 404, 84 L. Ed. Ad. Op. 360 *McGoldrick* v. *A. H. DuGrenier Inc.*, 309 U. S. 70, 60 S. Ct. 404, 84 L. Ed. Ad. Op. 219; *Jagels "Fuel Corporation"* v. *Taylor*, 60 S. Ct. 469, 280 N. Y. 766, 21 N. E. (2) 526.

In the *Jagels* case above the opinion in the New York Court of Appeals, which was sustained in the per curiam opinion in the Supreme Court of the United States, it shows that the third sales transaction, which was held subject to the New York sales tax act, involved a pure mail order business. The controversy in that case arose under the question concerning three classes of sales and the applicability

of the New York sales tax thereto. The third class is described as follows:

> "Written orders sent by the customer in New York to the New Jersey office followed by the delivery of a New Jersey yard to the customer in New York. In all three classes the customer is billed from the New Jersey office and payment is made to that office."

The tax on this sales transaction was upheld. Clearly this was a mail order transaction similar to the mail order transactions here involved.

Summary of Argument.

1.

The Iowa Sales Tax Law and the Iowa Use Tax Law present a plan for taxing all retail purchases in Iowa.

2.

The collection and payment provisions of the Iowa Use Tax Law as applied to the Corporations' Mail Order Businesses do not amount to extraterritorial operation of the law within the prohibition of the 14th Amendment to the Constitution of the United States.

3.

The collection and payment provisions of the Iowa Use Tax Law as applied to Corporations' Mail Order Businesses do not impose an unconstitutional burden on interstate commerce.

Respectfully submitted,

JOHN M. RANKIN,
Attorney General of the State of Iowa;
JOHN E. MULRONEY,
Assistant Attorney General of the State of Iowa,
Counsel for Petitioners.

State of Iowa

Retail Sales Tax Act of 1937

As Amended By

ACTS OF THE

FORTY-EIGHTH GENERAL ASSEMBLY

ORIGINAL ACT

Effective by Publication

April 1, 1937

NOTE: See footnotes on pages three and five for effective dates of amendments.

Revised and Issued By

IOWA STATE TAX COMMISSION

C. F. Garner, *Chairman*

D. L. Mumaw, *Vice Chairman*

Fred W. Nelson, *Member*

FOREWORD

This pamphlet is for use of taxpayers generally. It has been prepared for that purpose only. It contains only a portion of the Retail Sales Tax Act. Those parts of the Retail Sales Tax Act of 1937 that are not of interest to the general public are omitted herefrom. The language of the original Act is employed as far as practicable. All references to code sections contained in this revised copy of the Retail Sales Tax Act are to the Iowa Code of 1939.

AN ACT

To impose a tax on the gross receipts from retail sales as defined herein; to provide for the collection of such taxes and the administration of said act; to fix fines and penalties for the violation of the provisions of this Act; to provide for the appropriation of the revenues derived from said taxes; to appropriate funds for the administration of this Act; and to repeal all laws or parts of laws in conflict herewith.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. (Code 1939 Sec. 6943.074.) Definitions. The following words, terms, and phrases, when used in this Act, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

a. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

b. "Sales" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

c. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose other than for processing or for resale of tangible personal property and the sale of gas, electricity, water, and communication service to retail consumers or users, but does not include commercial fertilizer or agricultural limestone, or electricity or steam when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail.* Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that such property shall by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail, or shall be consumed as fuel in creating heat, power or steam for processing or for generating electric current.

d. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

e. "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water and communication service, and tickets or admissions to places of amusement and athletic events as provided in this Act; provided, however, that when in the opinion of the commission it is necessary for the efficient administration of this Act to regard any salesmen, representatives, truckers, peddlers or canvassers, as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their

*NOTE: Amendment in italics effective March 30, 1939.

...supervisors, employers, or persons, the commission may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this Act.

f. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purpose allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided further, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than sixty days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted, for the purpose of imposition of tax imposed by this Act, as has actually been received in cash by the retailer during such quarterly period as defined herein.

g. "Relief agency" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

h. The word "commission" means the Iowa State Tax Commission.

i. The word "taxpayer" includes any person within the meaning of subsection "e" hereof, who is subject to a tax imposed by this Act, whether acting for himself or as a fiduciary.

Sec. 2. (Code Sec. 6943.075.) Tax Imposed. There is hereby imposed, beginning the first day of April, 1937, a tax of two percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this Act, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing or service of gas, electricity, water and communication service, including the gross receipts from such sales by any municipal corporation furnishing gas, electricity, water and communication service to the public in its proprietary capacity, except as otherwise provided in this Act, when sold at retail in the state to consumers or users; and a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement and athletic events, except as otherwise provided in this Act.

The tax herein levied shall be computed and collected as hereinafter provided.

Sec. 3. (Code Sec. 6943.076.) Exemptions. There are hereby specifically exempted from the provisions of this Act and from the computation of the amount of tax imposed by it, the following:

a. The gross receipts from sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

b. The gross receipts from the sales, furnishing or service of transportation service.

c. The gross receipts from sales of tangible personal property used for the performance of a contract on public works executed prior to the ninth day of March, 1934.

d. The gross receipts from sales of tickets or admissions to state, county, district and local fairs,

[illegible]

Sec. 6. (Code Sec. 6943.077.) Credit on Tax. A credit shall be allowed against the amount of tax computed to be due and payable on the gross receipts from sales at retail of any tangible personal property upon which the state now imposes a special tax, whether in the form of a license tax, stamp tax, or otherwise, to the extent of the amount of such tax imposed and paid. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax herein provided; provided, that if such accounts are thereafter collected by the retailer, a tax shall be paid upon the amount so collected.

Sec. 7. (Code Sec. 6943.078.) Credit to Relief Agency.

1. A relief agency may apply to the commission for refund of the amount of tax imposed hereunder and paid upon sales to it of any goods, wares, or merchandise used for free distribution to the poor and needy.

2. Such refunds may be obtained only in the following amounts and manner and only under the following conditions:

a. On forms furnished by the commission, and filed within such time as the commission shall provide by regulation, the relief agency shall report to the commission the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, or merchandise used for free distribution to the poor and needy.

b. On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

c. The relief agency must prove to the satisfaction of the commission that the person making the sales has included the amount thereof in the computation of the gross receipts of such person and that such person has paid the tax levied by this Act, based upon such computation of gross receipts.

3. If the commission is satisfied that the foregoing conditions and requirements have been complied with, it shall refund the amount claimed by the relief agency.

Sec. 8. (Code Sec. 6943.079.) Adding of Tax. Retailers shall, as far as practicable, add the tax imposed under this Act, or the average equivalent thereof, to the sales price or charge and when added such tax shall constitute a part of such price or

*NOTE: Amendment in Italics effective April 21, 1933.

Sec. 7. (Code 6043.080.) Unlawful Acts. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Act will be assumed or absorbed by the retailer or that it will not be considered as an element in the price to the customer, or if added, that it or any part thereof will be refunded.

Sec. 8. (Code Sec. 6043.081.) Records Required. It shall be the duty of every retailer required to make a report and pay any tax under this Act, to preserve such records of the gross proceeds as sales as the commission may require and it shall be the duty of every retailer to preserve for a period of five years all invoices and other records of goods, wares, or merchandise purchased for resale; and all such books, invoices, and other records shall be open to examination at any time by the commission or any one of its duly authorized agents, and shall be made available within this state for such examination upon reasonable notice when the commission shall deem it advisable and shall so order.

Sec. 9. (Code Sec. 6043.082.) Return of Gross Receipts.

1. The retailer shall, on or before the twentieth day of the month following the close of the first quarterly period as defined in section 6043.069, and on or before the twentieth day of the month following each subsequent quarterly period of three months, make out a return for the preceding quarterly period in such form and manner as may be prescribed by the commission, showing the gross receipts of the retailer, the amount of the tax for the period covered by such return, and such further information as the commission may require to enable it correctly to compute and collect the tax herein levied; provided, however, that the commission may, upon request by any retailer and a proper showing of the necessity therefor, grant unto such retailer an extension of time not to exceed thirty days for making such return. If such extension is granted to any such retailer, the time in which he is required to make payment as provided in section 6043.083 shall be extended for the same period.

[redacted]

thereof; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

2. At the time of making such application, the applicant shall pay to the commission a permit fee of fifty cents for each permit, and the applicant must have a permit for each place of business.

3. Upon the payment of the permit fee or fees herein required, the commission shall grant and issue to each applicant a permit for each place of business within the state. A permit is not assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

4. Permits issued under the provisions of this Act shall be valid and effective without further payment of fees until revoked by the commission.

5. Whenever the holder of a permit fails to comply with any of the provisions of this Act or any orders, rules or regulations of the commission prescribed and adopted under this Act, the commission upon hearing after giving ten days' notice of the time and place of the hearing to show cause why his permit should not be revoked, may revoke the permit. The commission shall also have the power to restore licenses after such revocation.

6. The commission shall charge a fee of one dollar for the issuance of a permit to a retailer whose permit has been previously revoked.

Sec. 12. (Code Sec. 6943.085.) Failure to File Return—Incorrect Return. If a return required by this Act is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after the same is required by notice from the commission, such commission shall determine the amount of tax due from such information as it may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his stock on hand, and/or other factors. The commission shall give notice of such determination to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days after the giving of notice of such determination, apply to the commission for a hearing or unless the commission of its own motion shall reduce the same. At such hearing evidence may be offered to support such determination or prove that it is incorrect. After such hearing the commission shall give notice of its decision to the person liable for the tax.

Sec. 13. (Code Sec. 6943.086.) Appeals.

1. An appeal may be taken by the taxpayer to the district court of the county in which he resides, or in which his principal place of business is located, within sixty days after he shall have received notice from the commission of its determination as provided for in Section 6943.085.

2. The appeal shall be taken by a written notice to the chairman of the commission and served as an original notice. When said notice is so served it shall, with the return thereon, be filed in the

office of the clerk of said district court, and docketed as other cases, with the taxpayer as plaintiff and the commission as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, in penalty at least double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court.

2. The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the commission. In such appeal, the burden of proof shall be upon the taxpayer. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the commission who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the commission to the supreme court of this state in the same manner that appeals are taken in suits in equity, irrespective of the amount involved.

Sec. 14. (Code Sec. 6943.097.) Statute Applicable to Sales Tax. All the provisions of Section 6943.053 of the 1939 Code of Iowa, shall apply in respect to the taxes and/or penalties imposed by this Act, excepting that, as applied to any tax imposed by this Act, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this Act, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the commission shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this Act. The giving of such information under such circumstances shall not be deemed a violation of Section 6943.036 as applied to this Act.

Sec. 15. (Code Sec. 6943.098.) Service of Notices.

1. Any notice, except notice of appeal, authorized or required under the provisions of this Act may be given by mailing the same to the person for whom it is intended by registered mail, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this Act, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this Act by the giving of notice shall commence to run from the date of registration and posting of such notice.

2. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this Act.

Sec. 16. (Code Sec. 6943.099.) Penalties—Offenses.

1. Any person failing to file a return or corrected return or to pay any tax within the time required by this Act, shall be subject to a penalty of five per cent of the amount of tax due, plus one per cent of such tax for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of in the same manner as other receipts under this Act. Unpaid penalties may be enforced in the same manner as the tax imposed by this Act.

2. Any person who shall sell tangible personal property, tickets or admission to places of amusement and athletic events, or gas, water, electricity and communication service at retail in this state after his license shall have been revoked, or without procuring a license within sixty days after the effective date of this Act, as provided in Section 6943.094 of the Code, or who shall violate the provisions of Section 6943.080 of the Code, and the officers of any corporation who shall so act, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment, in the discretion of the court.

3. Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the assessment required by law to be made, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year, or be subject to both such fine and imprisonment, in the discretion of the court.

4. The certificate of the commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this Act, shall be prima facie evidence thereof.

Sec. 17. (Code Sec. 6943.090.) The commission and its employees shall administer the taxes imposed by this Act in the same manner and subject to all of the provisions of, and all of the powers, duties, authority, and restrictions contained in Sections 6943.091 to 6943.099 inclusive, Code, 1939, or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein.

State of Iowa

Personal Property Use Tax Act

S. F. 317
FORTY-SEVENTH GENERAL ASSEMBLY
As Amended By
ACTS OF THE
FORTY-EIGHTH GENERAL ASSEMBLY

Effective by Publication
April 16, 1937

NOTE: See footnote on page five for effective date of amendment.

Issued By
IOWA STATE TAX COMMISSION
C. F. Green, *Chairman*
D. L. Mumbow, *Vice Chairman*
Fred W. Nelson, *Member*

FOREWORD

This pamphlet is for use of taxpayers generally. It has been prepared for that purpose only. It contains only a portion of the Personal Property Use Tax Act. Those parts of the Personal Property Use Tax Act of 1937 that are not of interest to the general public are ommitted herefrom. The language of the original Act is employed as far as practicable. All references to code sections contained in this revised copy of the Personal Property Use Tax Act are to the Iowa Code of 1939.

AN ACT

To impose a tax on the use in this state of tangible personal property, as such terms are defined herein, including gas, electricity, and water; to provide certain exemptions therefrom; to provide for the collection of such tax and the administration of this Act; to fix interest, fines and penalties for the violation of the provisions of this Act; to provide for the disposition of the revenues derived from said tax; to appropriate funds for the administration of this Act; to exempt from the tax imposed by Senate File 316, Acts of the Forty-seventh General Assembly, (Div. IV., Chap. 329.3 Code, 1939) gross receipts from the sale of new motor vehicles and trailers; and to amend Section five thousand ninety-three-f twenty-nine (5093-f29), Code, 1935, relating to the refund of the motor vehicle fuel tax, to forbid such refund for fuel used in certain machinery for which the tax imposed by this Act or by Senate File 316, (Div. IV, Chap. 329.3 Code, 1939) Acts of the Forty-seventh General Assembly, has not been paid.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. (Sec. 6942.102 Code 1939.) The following words, terms and phrases when used in this act shall have the meanings ascribed to them in this section:

1. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (1) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, (2) fuel which is consumed in creating power, heat or steam for processing or for generating electric current, (3) industrial materials and equipment, which are not readily obtainable in Iowa, and which are directly used in the actual fabricating, compounding, manufacturing or servicing of tangible personal property intended to be sold ultimately at retail.

2. "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

3. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided that cash discounts allowed and taken on sales shall not be included.

4. "Tangible personal property" means tangible goods, wares, and merchandise, and gas, electricity, and water when furnished or delivered to consumers or users within this state.

5. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this act; provided, however, that when in the opinion of the commission it is necessary for the efficient admin-

istration of this act to regard any salesmen, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the commission may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this act.

6. "Retailer maintaining a place of business in this state" or any like term, shall mean and include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state pursuant to chapter three hundred eighty-six (386), code, 1939.

7. "Motor vehicle" shall mean every motor vehicle, as is now or may hereafter be so defined by the motor vehicle law of this state, which is required to be registered under such motor vehicle law.

8. "Person", "tax commission", and "taxpayer" shall have the same meaning as defined in section one of Senate File 316, acts of the Forty-seventh General Assembly. (Div. IV, Chap. 329.3 Code, 1939.)

9. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by the motor vehicle law of this state, which is required to be registered under such motor vehicle law.

Sec. 2. (Code Sec. 6943.103.) An excise tax is hereby imposed on the use in this state of tangible personal property purchased on or after the effective date of this act (April 16, 1937) for use in this state, at the rate of two per cent of the purchase price of such property. Said tax is hereby imposed upon every person using such property within this state until such tax has been paid directly to the county treasurer, to a retailer, or to the commission as hereinafter provided.

Sec. 3. (Code Sec. 6943.104.) The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this act:

1. Tangible personal property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by Senate File 316, acts of the Forty-seventh General Assembly, (Code, Chap. 329.3, Div. IV, The Sales Tax Act) and any amendments made or which may hereafter be made thereto. This exemption does not include new motor vehicles as defined herein.

2. Tangible personal property used (a) in interstate transportation or interstate commerce, or (b) for the performance of a building or construction contract executed prior to the effective date of this act. (April 16, 1937.)

3. Tangible personal property upon which the state now imposes and collects a special tax, whether in the form of a license tax, stamp tax, or otherwise.

4. All articles of tangible personal property brought into the state of Iowa by a non-resident individual thereof for his or her use or enjoyment while within the state.

5. Tangible personal property not readily obtainable in Iowa and used in the operation of street railways.

6. *Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of section three (3) of chapter one hundred ninety-six (196), Acts of the Forty-seventh General Assembly, as amended.** (Code Sec. 6943.076.)

Sec. 4. (Code Sec. 6943.105.) For the purpose of the proper administration of this act and to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state.

Sec. 5. (Code Sec. 6943.106.) The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all new motor vehicles and new trailers shall be collected by the county treasurer pursuant to the provisions of section six hereof. (Code Sec. 6943.107.)

2. The tax upon the use of all tangible personal property other than that enumerated in subsection one hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the tax commission shall authorize pursuant to section nine, (Code Sec. 6943.110) shall be collected by such retailer and remitted to the state tax commission, pursuant to the provisions of sections eight to twelve inclusive. (Code Sec. 6943.109 to 6943.113 inclusive.)

3. The tax upon the use of all tangible personal property not paid pursuant to subsections one and two hereof shall be paid to the commission directly by any person using such property within this state, pursuant to the provisions of section thirteen hereof. (Code Sec. 6943.114.)

Sec. 6. (Code Sec. 6943.107.) The tax hereby imposed upon the use of new motor vehicles and new trailers shall be paid by the owner thereof to the county treasurer from whom the original certificate of registration for such motor vehicle or trailer is obtained. No original certificate of registration for any new motor vehicle or new trailer shall be issued until said tax has been so paid. The county treasurer shall require every applicant for an original certificate of registration for any new motor vehicle or new trailer to supply such information as he or the commission may deem necessary as to the time of purchase, the purchase price, and other information relative to the purchase of said motor vehicle or trailer. On or before the tenth day of each month the county treasurer shall remit to the commission the amount of the taxes so collected during the preceding month, together with an itemized statement on forms furnished by the commission showing the name of each taxpayer, the make and purchase price of each motor vehicle or trailer, the amount of tax paid in each case, and such other information as the commission shall require.

*NOTE: Amendments in italics effective April 21, 1939.

Sec. 7. (Code Sec. 6943.108.) Motor vehicle or trailer dealers, in making their reports and returns to the commission for the purpose of paying the retail sales tax imposed by Senate File 316, acts of the Forty-seventh General Assembly, (Div. IV, chapter 329.3 Code, 1939) shall be permitted to deduct all gross receipts from retail sales of new motor vehicles and new trailers. Gross receipts from such new motor vehicle and new trailer sales are hereby expressly exempted from the tax imposed by Senate File 316, acts of the Forty-seventh General Assembly, (Div. IV, Chap. 329.3) but, if required by the commission, such gross receipts shall be included in the returns made by motor vehicle or trailer dealers under said act, and proper deductions taken pursuant to this section.

Sec. 8. (Code Sec. 6943.109.) Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section three hereof nor collectible under the provisions of section six hereof, shall at the time of making such sales, whether within or without the state, collect the tax imposed by this act from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the commission, if the commission shall, by regulation, require such receipt. Each such retailer shall list with the commission the name and address of all his agents operating in this state, and the location of any and all his distribution or sales houses or offices or other places of business in this state.

Sec. 9. (Code Sec. 6943.110.) The commission may, in its discretion, upon application authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the commission furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the commission shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. Such authority and permit may be cancelled when, at any time, the commission considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state.

Sec. 10. (Code Sec. 6943.111.) It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this act will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The commission shall have the power to adopt and promulgate rules and regulations for adding such tax, or the average equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this section within

this state shall be guilty of a misdemeanor and subject to the penalties provided in section nineteen hereof. (Code Sec. 6943.130.)

Sec. 11. (Code Sec. 6943.112.) The tax herein required to be collected by any retailer pursuant to sections eight (Code Sec. 6943.109) or nine (Code Sec. 6943.110) hereof, and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state.

Sec. 12. (Code Sec. 6943.113.) Each retailer required or authorized, pursuant to sections eight (Code Sec. 6943.109) or nine (Code Sec. 6943.110) hereof, to collect the tax herein imposed, shall be required to pay to the commission the amount of such tax, on or before the twentieth day of the month next succeeding such quarterly period, the first such quarterly period being the period commencing on the first day of April, 1937, and ending on the thirtieth day of June, 1937. At such time, each such retailer shall file with the commission a return for the preceding quarterly period in such form as may be prescribed by the commission showing the sales price of any or all tangible personal property sold by the retailer during such preceding quarterly period, the use of which is subject to the tax imposed by this act, and such other information as the commission may deem necessary for the proper administration of this act. The return shall be accompanied by a remittance of the amount of such tax, for the period covered by the return, provided that where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended over a period longer than sixty days from the date of the sale thereof, the retailer may collect and remit each quarterly period that portion of the tax equal to two per cent of that portion of the purchase price actually received during such quarterly period.

The commission, if it deems it necessary in order to insure payment to the state of the amount of such tax, may in any or all cases require returns and payments of such amount to be made for other than quarterly periods. The commission may upon request and a proper showing of the necessity therefor, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his duly authorized agent, and must be certified by him to be correct.

Sec. 13. (Code Sec. 6943.114.) Any person who uses any property upon which the tax herein imposed has not been paid, either to the county treasurer or to a retailer or direct to the commission as herein provided, shall be liable therefor, and shall on or before the twentieth day of the month next succeeding each quarterly period pay the tax herein imposed upon all such property used by him during the preceding quarterly period in such manner and accompanied by such returns as the commission shall prescribe. All of the provisions of section twelve (Code Sec. 6943.113) with reference to such returns and payments shall be applicable to the returns and payments herein required.

Sec 14. (Code Sec. 6943.115.) The commission may, when in its judgment it is necessary and advisable to do so in order to secure the collection of the tax

levied under this act, authorize any person subject to such tax, and any retailer required or authorized to collect such tax pursuant to the provisions of sections eight (Code Sec. 6943.109) and nine (Code Sec. 6943.110) hereof, to file with it a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the commission may fix, to secure the payment of any tax, amount, and/or penalties due or which may become due from such person. In lieu of such bond, securities approved by the commission, in such amount as it may prescribe, may be deposited with it, which securities shall be kept in the custody of the commission and may be sold by it at public or private sale, without notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax and/or penalties due. Upon any such sale, the surplus, if any, above the amounts due under this act shall be returned to the person who deposited the securities.

Sec. 15. (Code Sec. 6943.116.) If any return required by this act is not filed, or if any return when filed is incorrect or insufficient, and the maker or person from whom it is due fails to file a corrected or sufficient return within twenty days after the same is required by notice from the commission, the commission shall have the same power to determine the amount due, as is vested in the commission by sections twelve (12) (Code Sec. 6943.085), thirteen (13) (Code Sec. 6943.086), and fifteen (15) (Code Sec. 6943.088), of Senate File 316, acts of the Forty-seventh General Assembly, subject to all of the provisions, and restrictions, and rights of appeal provided in said sections.

Sec. 16. (Code Sec. 6943.117.) All of the provisions of sections fourteen (14) (Code Sec. 6943.087) and fifteen (15) (Code Sec. 6943.088) of Senate File 316, acts of the Forty-seventh General Assembly (Chap. 329.2 Code, 1939) shall apply in respect to the procedure, taxes, amounts required to be paid, and/or penalties imposed, as provided by this act.

Sec. 17. (Code Sec. 6943.118.) Any person failing to file a return or corrected return or to pay any tax and/or amount required to be paid by this act within the time required by this act, shall be subject to a penalty of five percent of the amount due, plus one percent of such amount for each month of delay or fraction thereof, excepting the first month after such return was required to be filed or such tax or amount became due; but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the commission and disposed of in the same manner as other receipts under this act. Unpaid penalties may be enforced in the same manner as the tax imposed by this act. The certificate of the commission to the effect that a tax and/or amount required to be paid by this act has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this act, shall be prima facie evidence thereof.

Sec. 18. (Code Sec. 6943.119.) Any person required to make, render, sign or certify any return or supplementary return, who makes any false or fraudu-

last return with intent to defeat or evade the tax and/or amount required to be paid by this act, shall be guilty of a felony and shall, for each such offense, be fined not less than five hundred (500) dollars and not more than five thousand (5,000) dollars, or be imprisoned not exceeding one year, or be subject to both such fine and imprisonment, in the discretion of the court.

Sec. 19. (Code Sec. 6943.120.) Any retailer or other person failing or refusing to furnish any return herein required to be made, or failing or refusing to furnish a supplemental return or other data required by the commission, shall be guilty of a misdemeanor and subject to a fine of not to exceed one hundred (100) dollars for each such offense, or to imprisonment for not to exceed thirty days, or to both such fine and imprisonment, in the discretion of the court.

Sec. 20. (Code Sec. 6943.121.) Every retailer required or authorized to collect taxes imposed by this act and every person using in this state tangible personal property purchased on or after April 1, 1937, shall keep such records, receipts, invoices, and other pertinent papers as the commission shall require, in such form as the commission shall require. The commission or any of its duly authorized agents is hereby authorized to examine the books, papers, records and equipment of any person either selling tangible personal property or liable for the tax imposed by this act, and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the amount due under the provisions of this act. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice when the commission shall deem it advisable and shall so order.

Sec. 21. (Code Sec. 6943.122.) Whenever any retailer maintaining a place of business in this state, or authorized to collect the tax herein imposed pursuant to section nine (Code Sec. 6943.110) hereof, fails to comply with any of the provisions of this act or any orders, rules, or regulations of the commission prescribed and adopted under this act, the commission may, upon notice and hearing as hereinafter provided, by order revoke the permit, if any, issued to such retailer under section eleven (11) of Senate File 316, acts of the Forty-seventh General Assembly (Code Sec. 6943.084), or if such retailer is a corporation authorized to do business in this state under chapter three hundred eighty-six (386), code, 1939, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from the commission an order finding that such corporation has complied with its obligations under this act. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given ten days notice of the time, place, and purpose of such hearing. The commission shall

have the power in its discretion to issue a new permit pursuant to section eleven of Senate File 316, acts of the Forty-seventh General Assembly (Code Sec. 6942.064), after such revocation.

Sec. 22. (Code Sec. 6942.123.) The commission is hereby charged with the enforcement of the provisions of this act, and the commission and its employees shall administer this act and the taxes imposed by this act in the same manner and subject to all of the provisions of, and all of the powers, duties, authority, and restrictions contained in sections 6943.091 to 6943.099, inclusive, code, 1939, or any amendments which may hereafter be made thereto, all of which sections are by this reference incorporated herein.

Sec. 23. (Code Sec. 6942.124.) All revenues arising under the operation of this act, less cost of collection and administration, shall be paid into the general fund of the state of Iowa.

If the gross receipts from or the use of any stationary engine, tractor, boat, aircraft, or other type of power driven machinery constituting with the engine one unit, are subject to the tax imposed by Senate File 316 (Chapter 329.3, Code, 1939), or Senate File 317 (Chapter 329.4, Code, 1939), acts of the Forty-seventh General Assembly, no refund for motor vehicle fuel used in operating or propelling such machinery shall be made until the person claiming such refund has established to the satisfaction of the treasurer that such tax for such machinery has been paid.

Sec. 24. (Code Sec. 6942.125.) If any article of tangible personal property has already been subjected to a tax by any other state in respect to its sale or use in an amount less than the tax imposed by this title, the provisions of this title shall apply, but at a rate measured by the difference only between the rate herein fixed and the rate by which the previous tax upon the sale or use was computed. If such tax imposed in such other state is two per cent (2%) or more, then no tax shall be due on such articles.